

MEMORANDUM

Not On
Alter: te No. 2
Agenda Item No. 2(d)

TO Honorable Mayor and Members
Board of County Commissioners

DATE February 18, 1992

SUBJECT Metro-Miami Action
Plan Trust

FROM

Robert A. Ginsburg
County Attorney

92-12

The accompanying ordinance was prepared and placed on the agenda at the request of Commissioner Arthur E. Teele, Jr..



Robert A. Ginsburg
County Attorney

RAG/ydl

ORDINANCE NO. 92-12

ORDINANCE ESTABLISHING THE METRO-MIAMI ACTION PLAN TRUST; PROVIDING FOR TRUST MEMBERSHIP; APPOINTMENT, TENURE AND REMOVAL OF TRUSTEES; ORGANIZATION AND STAFF SUPPORT; POWERS AND DUTIES OF THE TRUST; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, wide economic and social disparity exists in Dade County between members of the African-American community and members of other ethnic communities; and

WHEREAS, there is a great need in this community for an institution or organization to address the health, economic and social needs of Dade County's African-American community and to encourage and facilitate the coordination of programs providing assistance to Dade County's African-American community.

WHEREAS, the Metro-Miami Action Plan was created in 1983 to ease the racial disparities between members of the African-American community and members of other ethnic communities by the development of an action plan for the social and economic development of the African-American community; and

WHEREAS, it is believed by this Board that the Metro-Miami Action Plan will become more effective in achieving its goals if it is structured as a trust;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA:

Section 1. Creation and Purpose.

A. There is hereby created and established a revocable trust, the terms of which may be modified by Dade County, which trust shall be named and known as the Metro-Miami Action Plan Trust (hereinafter referred to as the "trust"). The trust shall be a public body corporate and politic which, through its governing body, may exercise all those powers either specifically granted herein or necessary in the exercise of those powers herein enumerated. For nine (9) years following the effective date of this ordinance (hereinafter referred to as "transition period"), the trust shall be an agency and instrumentality of Metropolitan Dade County. At the conclusion of the transition period, the Board of County Commissioners shall decide, as provided for in section 7 herein, whether the trust shall remain an agency of Dade County or become an entity wholly independent of county government.

B. This Board recognizes the independence of the trust and its obligation to provide the Board of County Commissioners and the County Manager with independent advice on matters of policy relating to the purposes and projects of the Metro-Miami Action Plan.

C. Notwithstanding the independence of the trust, this Board may by resolution take any action to effectuate the purposes of the Metro-Miami Action Plan.

Section 2. Governing body.

A. The governing body of the trust shall be a board of trustees composed of twenty-one (21) voting members.

B. The board of trustees shall hold regular meetings in accordance with the bylaws of the trust and other such meetings as it deems necessary.

C. The establishment and activities of the board of trustees shall be governed by section 2-11.36 et seq. of the Code of Metropolitan Dade County, as applicable.

Section 3. Appointment and Tenure.

A. Nominating Council. Trustees shall be appointed by resolution of the Board of County Commissioners after having been selected by the Metro-Miami Action Plan Trust Nominating Council (hereinafter known as "nominating council") established and described herein. The nominating council shall be comprised of five (5) voting members, one (1) of whom shall be the chairperson of the board of trustees of the trust and four (4) of whom shall be appointed by the Mayor and ratified by the Board of County Commissioners. No acting trustee of the trust, other than the chairperson of the board of trustees, shall serve on the nominating council, nor shall any acting member of the nominating council, other than the chairperson of the board of trustees, be eligible to serve on the board of trustees of the trust. In serving on the nominating council, the chairperson of the board of trustees of the trust shall not vote on or participate in any way in any matter affecting the chairperson's appointment to the

board of trustees of the trust. The members of the nominating council shall be appointed for staggered three (3) year terms and shall not serve more than three (3) consecutive terms. The sole function of the nominating council shall be to solicit, screen, interview and recommend for appointment the best qualified candidate for each vacancy of the board of trustees. The nominating council and the procedures under which it will operate shall be approved by the Board of County Commissioners. The nominating council shall submit to the Board of County Commissioners one (1) nominee for each vacancy on the trust board. The slate of nominees shall be submitted directly to the Board of County Commissioners no later than September 1 of each year. As applicable, Section 2-11.36 et seq. of the Code of Metropolitan Dade County shall govern the establishment and activities of the nominating council. In the event the Commission is unable to appoint a member to the board of trustees pursuant to said section(s), no action of the trust shall be rendered void because of such inability on the part of the Commission.

In the event of a vacancy during the term of a trustee, the trust shall notify the Board of County Commissioners of the vacancy and shall request that it be filled in accordance with the applicable criteria set forth herein either as a part of the annual appointment process or by a special meeting of the nominating council.

At the conclusion of the transition period (hereinafter defined), the Board of County Commissioners, after selection by

the nominating council, shall continue to appoint members of the trust.

B. Composition. Notwithstanding sections 2-11.1 of this Code with respect to eligibility of membership on the board of trustees, the voting membership shall include representatives from the following areas of professional expertise: (1) economic and business development; (2) criminal justice; (3) community based organizations; (4) educational organizations; (5) banking and finance; and (6) health organizations. In addition, the board of trustees shall have at least one (1) voting member from the Dade County School Board and one (1) voting member from State or local government. At least seven (7) members of the initial board of trustees shall be selected from members of the existing Metro-Miami Action Plan Board of Directors. With respect to the appointment of the balance of trustees, careful consideration shall be given to the expertise needed to accomplish the goals and objectives of the trust. In addition, a majority of the membership of the board of directors shall be members of the African-American community.

C. Qualifications. Each member of the board of trustees shall be a United States citizen, a permanent resident and duly qualified elector of Dade County unless the Board of County Commissioners waives the residency requirement by a two-thirds (2/3) vote of its membership. No person shall be qualified to sit as a trustee if that person is an officer, representative, administrator or employee of any consultant, contractor or agency contracting with or receiving funding from the trust except if

that person is employed by or is serving on the board of trustees as a representative of state or local government. Trustees who are representatives of or who are employed by any State or local governmental agency may not vote on matters affecting the governmental agency by which they are employed or whom they represent.

D. Tenure of Trustees. The trustees shall serve terms of three (3) years each; provided, however, that of the original board of trustees, the Board of County Commissioners shall select one-third ($1/3$) for a term of one (1) year and one-third ($1/3$) for a term of two (2) years. No trustee shall be permitted to serve more than three (3) consecutive and complete terms of three (3) years each unless so authorized by a two-thirds ($2/3$) vote of the full membership of the Board of County Commissioners.

E. Compensation. Trustees shall serve without compensation but shall be entitled to reimbursement for necessary expenses.

Section 4. Removal of Trustees. Any trustee shall be removed for excessive absence in accordance with section 2-11.39 of the Code of Metropolitan Dade County. In addition, before or after the transition period any trustee may be removed for cause by two-thirds ($2/3$) vote of the entire membership of the Board of County Commissioners or, at the conclusion of the transition period (hereinafter defined), by two-third ($2/3$) vote of the entire membership of the board of trustees.

Section 5. Organization: Staff Support.

A. Organization. The board of trustees shall organize after the members have qualified to serve and shall elect one of its voting members as chairperson, one of its voting members as vice-chairperson and such other officers as the board of trustees may determine to be necessary. In addition, the board of trustees shall make, adopt and amend bylaws, rules and regulations for its own governance.

B. Employees. Subject to Metropolitan Dade County's budgetary processes and the availability of funds, for nine (9) years following the effective date of this ordinance, the executive director and all employees of the trust shall be Metropolitan Dade County employees. During the transition period, the board of trustees shall recommend to the County Manager and the County Manager shall appoint the executive director.

At the conclusion of the transition period, the board of trustees shall have the power to select, appoint and remove the executive director and the Executive Director and all employees shall be employees of the trust which shall be solely responsible for payment of all employee salaries and benefits. If the trust so requests and at the sole expense of the trust, the Board of County Commissioners may loan to the trust certain Dade County employees.

C. Staff support. During the transition period, the County Attorney shall serve as attorney for the trust, the County Manager shall provide audit, budget and financial assistance to

the trust, and the Clerk of the Board of County Commissioners shall be the Clerk and Secretary of the trust.

D. The Board of County Commissioners shall provide to the trust fiscal review and oversight as well as programmatic focus and direction.

E. The trust shall present an annual financial report including a current statement of all accounts. The trust shall not be able, however, to establish any bank accounts without the express approval of either the Board of County Commissioners or the County Manager; provided, however, that the trust can establish an account for Dade Community Foundation monies to receive and expend non-county monies which the trust receives. No County monies nor income from County accounts shall be deposited into the Dade Community Foundation account.

F. Subject to the Metropolitan Dade County budgetary process and the availability of funds, the County will include in its annual budget funds for administrative costs and additional funds for programmatic activities. Requests for administrative and programmatic funds are to be made in accordance with the procedures described in Section 6(I). The County Manager is directed to include his recommendation for administrative and programmatic funding for the trust in the annual proposed budget.

Section 6. Powers and Duties of the Trust.

The trust, acting through its governing body, shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided:

A. At the conclusion of the transition period, the trust shall be empowered to sue and be sued, to plead and be impleaded, to contract and be contracted with, and to have an official seal and alter the same, subject to the provisions of paragraph (E) below.

B. Every five (5) years, the trust shall establish a five (5) year comprehensive plan (hereinafter "the plan"). The plan shall contain one year goals and objectives the completion of which shall be needed to accomplish the comprehensive plan. The first plan shall be submitted to the Board of County Commissioners for approval.

C. The trust shall be empowered to expend administrative and programmatic resources to achieve each of its one (1) year goals and objectives as well as to accomplish and complete each five (5) year plan.

D. The trust shall identify and develop a variety of alternative funding sources and shall seek and apply for state, federal and private grants.

E. During the transition period, the trust, as an agent and instrumentality of Metropolitan Dade County, shall be authorized to act for Dade County in the performance and enforcement of all contracts. However, no contract shall be binding upon Metropolitan Dade County unless specifically approved by the Board of County Commissioners.

F. Upon the conclusion of the transition period, the trust will be neither an agent nor instrumentality of Metropolitan Dade County and shall not be authorized to act for Dade County in the

performance and enforcement of contracts. Moreover, contracts and amendments thereto executed by the trust or other obligations incurred by the trust shall not be binding upon Dade County. In the event that the trust shall be revoked after the conclusion of the transition period, any obligations of the trust shall not be enforceable against Dade County.

G. Upon the conclusion of the transition period, the trust shall have the authority to purchase or otherwise obtain title in its own name to real and personal property and shall be authorized to sell or otherwise lawfully dispose of real and personal property.

H. Upon the conclusion of the transition period, the trust shall be empowered to appoint, remove and suspend employees or agents of the trust to fix their compensation and to adopt personnel and management policies.

I. The trust may submit to Dade County yearly requests for administrative and programmatic funding. During the transition period, the trust's budget requests shall be prepared and submitted in the same manner as the budget for a County department and will be considered as part of the Dade County budget process. The trust's budget requests shall be prepared in a format prescribed by the County Manager. Upon the conclusion of the transition period, all budget requests submitted by the trust shall be prepared by the trust and reviewed by the County in a manner similar to the way in which budget requests of other

community based organizations are reviewed. Dade County, subject to budgetary processes and the availability of funds, shall fund the trust for a period of at least ten (10) years. Any financial support received from the County shall be in addition to any other funds secured by the trust.

J. Upon the conclusion of the transition period, the trust, with the assistance of the County Attorney's Office, shall restructure as a not-for-profit corporation.

Section 7. Extension of the Transition Period.

At the conclusion of the transition period, the County Manager shall review the performance of the trust and recommend to the Board of County Commissioners, and the Board of County Commissioners shall decide, whether the transition period will be extended for another three (3) year period. If the Board of County Commissioners extends the transition period, at the conclusion of the extended transition period the County Manager shall again review the performance of the trust and make a recommendation to the Board of County Commissioners as to whether the trust should permanently become an agency of Dade County or if the trust should become an agency independent of Dade County as provided for herein.

Section 8. Applicability of Florida Open Government and Conflict of Interest Laws.

The trust shall at all times operate under the Florida Open Government Laws, including the "Sunshine Laws", Public Meetings Laws and Public Record Laws, and shall be governed by all State

and County conflict of interest laws, as applicable, including the Metropolitan Dade County Conflict of Interest and Code of Ethics ordinance, Section 2-11.1 of the Code of Metropolitan Dade County, Florida.

Section 9. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 10. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Metropolitan Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 11. The provisions of this ordinance shall become effective ten (10) days after the date of enactment.

PASSED AND ADOPTED: FEB 18 1992

Approved by County Attorney as
to form and legal sufficiency.

Prepared by:

RAG
MAC